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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Part 95 of the Commission's)	WT Docket No. 98-169
Rules to Provide Regulatory Flexibility in the)	RM-8951
218-219 MHz Service)	
)	
Amendment of Part 95 of the Commission's)	WT Docket No. 95-47
Rules to Allow Interactive Video and Data)	RM-8476
Service Licensees to Provide Mobile Services)	(proceeding terminated)

REPLY COMMENTS OF COMMUNITY TELEPLAY, INC.

Community Teleplay, Inc. ("CTI") hereby submits its reply comments in the captioned proceeding pursuant to the Commission's Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-228, released on September 17, 1998 [hereinafter "NPRM"].

Construction and Substantial Service Requirements. CTI counted a total of twelve initial comments filed in this proceeding in response to the NPRM. Notably absent were licensees representing the top 9 markets. Kingdon R. Hughes ("Hughes"), a licensee for the Philadelphia market, Boston Spectrum Associates, L.L.C. ("BSA") and Houston Spectrum Associates, L.L.C. ("HSA") -- licensees for two of top nine markets of Boston and Houston, respectively -- and at least one of the licensees for the San Francisco market ("S.F. Licensee")¹ were the only top-9 licensee participating, well less than a third of the total of 18 licensees in the top-9 markets. None of the other licensees in these top-9 markets, including the very largest of the top-9 (New York, Los Angeles, Chicago) were heard from. The absence of their participation in the initial rounds of

¹ The S.F. Licensee filed with the informal association described as "The Bay Area 218-219 MHz Group."

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comments should be seen by the Commission as clear evidence that the top-9 licensees (excepting a small handful) have little at stake when it comes to their 218-219 MHz licenses that they won by pure chance in a lottery.

The general lack of interest shown by licensees in the top-9 markets evidences they have no plans for pursuing meaningful buildouts in these critical markets even though, as CTI demonstrated in its initial comments, equipment is available to get started. The Commission therefore should hold the top-9 market licensees to the current five-year benchmark and extend that benchmark only upon a showing that commercially viable equipment is unavailable. If such equipment is available at the time of the benchmark, the Commission should grant extensions on a case-by-case basis upon a showing of substantial progress toward construction. Once the lottery winner meets the benchmark, it would receive a 5-year renewal, and be required to provide substantial service within 1 year of renewal. The auction winners would be subject to the same rule -- meeting the current construction benchmark as a condition for renewal, with substantial service required within 1 year of renewal. The Commission should identify "safe harbors" that meet the substantial service requirement as well as justify extensions of construction requirements on a case-by-case basis. Unserved areas should be auctioned following the end of the 5-year renewal periods.

The Commission should reject the speculative view that license forfeiture by the lottery winners unable to meet construction benchmarks would somehow be bad for the 218-219 MHz industry, or that holding the lottery winners to current construction benchmarks will hinder the attraction of capital for buildouts. The Commission should note that the lottery winners in the very top MSAs have not bothered to inform the Commission of their efforts in attracting capital and building out systems by submitting initial comments in this rulemaking proceeding. CTI submits

that the best conclusion the Commission can draw is that these licensees simply do not care, or at least not much. CTI believes the nascent 218-219 MHz industry will be better served by the Commission replacing those licensees, if necessary, with new licensees who actively pursue the construction and development of 218-219 MHz systems.

CTI disagrees with In-Sync's justification for extending lottery winners' terms to 10 years. In-Sync argued that "equipment distribution problems" have been "greatest for the lottery-winners" and that "capital costs to deploy meaningful service are higher" in the top-9 markets. In-Sync at n. 9. In-Sync provided no evidence to support either of those propositions as justification for extending lottery licenses to 10 years. First, the vast majority of licensees in the top-9 markets did not care enough to submit initial comments that set forth reasons why their license terms should be extended. Second, as CTI showed in its initial comments, no less than eight equipment manufacturers received type acceptance for 218-219 MHz equipment. With few exceptions, none of the licensees in the top-9 markets have explained why this equipment was inadequate or otherwise explained why they have been unable to pursue buildouts in their markets. It is simply not in the public interest to automatically give the top-9 market licensees five more years before they have to do anything with their valuable spectrum.² Finally, "equipment distribution problems" are no greater for lottery winners than they are for auction winners. CTI has been able to acquire and deploy equipment based in its market. That equipment is not expensive and integration into a "national footprint" is not

² In the cases of the few top-9 licensees that have submitted comments, they make showings of the type that might justify extensions of the construction benchmarks. The key to the Commission judgment whether to grant extensions (a judgment the Commission has made innumerable times in other services, especially the broadcast services), should be whether the licensee is making substantial progress, or not. The Commission should adopt new rules to that effect.

required for the type of local services that can be provided. Arguments to the contrary amount to little more than empty excuses for why the lottery winners have done precious little to pursue development of 218-219 MHz services in their markets.

Anti-trafficking Rule. CTI also opposes lifting the anti-trafficking rule for lottery licensees. Anti-trafficking rules are intended to discourage speculative sales of licenses won at lottery and encourage system construction. Systems in the top-9 markets still do not exist, and there is a need for the anti-trafficking rule now more than ever. Lifting the rule now most likely will do little more than reward the top-9 markets for doing next to nothing to advance the 218-219 MHz industry, and/or place the licenses in the hands of new speculators through a private auction rather than a public one. The public interest does not support such outcomes. The anti-trafficking rule should be retained. If a current top-9 market licensee has no interest in participating in this industry, the Commission's rules should require that licensee to return its license so that it can be publicly auctioned to a party who values the opportunity to develop a 218-219 MHz business.

Technical Operating Parameters. After reviewing of a number of commenters describing the operating parameters of licensees of Automated Maritime Telecommunications Systems ("AMTS"),³ CTI agrees that the Commission should adopt similar rules for 218-219 MHz licensees. AMTS licensees operate in the 216-218 MHz band immediately adjacent to TV Channel 13 (210-216 MHz). In contrast, 218-219 MHz licensees are separated by 2 MHz from TV Channel 13. Given these facts, there is no reason why the operating parameters of 218-219 MHz licensees should be more stringent than those for AMTS licensees based on concerns over interference to TV Channel 13. Accordingly, CTI proposes that, like AMTS licensees, 218-219 MHz licensees should be authorized to: (1) operate

³ Hughes at 9; Various Licensees at 17-18; BSA/HSA at n.9; ISTA at 15-16.

CTSs at an output power not to exceed 50 watts in the Grade B contour of a Channel 13 station based on a plan to prevent interference;⁴ and (2) operate mobile units at an output power not exceeding 25 watts and an ERP not exceeding 18 watts.⁵ In addition to the ODU/TAC study submitted by CTI, studies cited by other commenters support power limitations can be increased for the 218-219 MHz without increasing the potential for interference to Channel 13.⁶

Duty cycle. Based on the TAC/ODU study, CTI proposed that the rules should allow mobile units whose main function is to operate outside a residence to operate without the limitation of a duty cycle. In-Sync observes that the Commission has never received a complaint of interference to Channel 13 from adjacent frequencies where there is no duty cycle limit. In-Sync at 14; Various Licensees at 18. Various Licensees also argue that the duty cycle was not the primary interference prevention mechanism, but only an additional, back-up safeguard, and that regulatory parity requires its removal. Various Licensees at 19. BSA/HSA show that FM Channel 88.1 operates adjacent to TV Channel 6 without a “guard band” and with no duty cycle, and that effective methods have been developed to prevent interference to television reception. BSA/HSA at 9. These commenters further show that there is a 2 MHz guard band between Channel 13 and the 218-219 service spectrum, and also point out that the low power radio service in the 216-217 MHz will operate directly adjacent to Channel 13 without a duty cycle restriction. Id. CTI submits that all of these reasons support elimination of the duty cycle rule for all types of fixed and mobile units only with the exception of

⁴ Based on the AMTS rule found in Section 80.215(h)(2) and (h)(5) of the Commission’s Rules.

⁵ Based on the AMTS rule found in Section 80.215(i) of the Commission’s Rules.

⁶ See ISTA at 7-8; HSA/BSA at 10-11. DITV, whose parent is a Channel 13 television station, generally agreed that the ERP limit can be raised for mobile units. DITV at 6-7.

fixed units that are placed directly on top of a television receiver, i.e., the only type of unit for which the rule was originally adopted.

Automatic Power control capability. CTI proposed that the automatic power control rule be eliminated for fixed remote units but retained for mobile remote units. DITV supported retaining the automatic power control requirement for RTUs with ERPs in excess of 100 milliwatts. DITV at 7. Various Licensees support CTI's position as the alternative to their proposal to eliminate the rule completely. ISTA proposed a manual or variable setting fixed at the time of installation of the remote unit in order to accommodate one-way systems. ISTA at 7.

In contrast to mobile RTUs, CTI supports the view that the automatic power control rule should be relaxed for fixed units providing services such as meter reading and system monitoring. In-Sync at 10; ISTA at 9. Such services will be one-way services in which fixed remote units that transmit information to pick-up points and should not have to operate at varying power levels, unlike mobile units, in order to have the information received. At the same time, fixed RTUs utilized for meter reading and monitoring services create the potential for unnecessary interference to co-channel and adjacent channel operations (of 218-219 MHz licensees in other markets, for example), if such RTUs are operated at maximum power levels beyond what is required for effective communication. Accordingly, CTI proposes that the automatic power control requirement be retained only for fixed RTUs operating above 200 milliwatts.

Regulatory Status and Permissible Communication. AirTouch Paging ("AirTouch") was the only commenter opposing the Commission's proposal to provide licensees with the choice of being regulated as private or common carriers as proposed at paragraphs 32 through 34 of the NPRM. AirTouch at 4-8. To the extent that AirTouch challenges the ability of 218-219 MHz licensees to

provide the fixed and mobile services already permitted,⁷ its comments can be viewed as a late attempt to have the Commission reconsider prior Commission orders. Moreover, AirTouch is incorrect in its suggestion that the Commission has set forth no “reasoned analysis” for permitting 218-219 MHz licensees to elect common carrier status.

In fact, the Commission gave plenty of reasons for this change, namely, to accommodate the wide array of service offerings that are emerging in the 218-219 MHz service, remain consistent with precedent favoring authorizing a wide variety of services consistent with its public interest mandate, and provide regulatory parity with other services. NPRM at para. 33. Much of the precedent cited by the Commission came into existence after the agency limited the regulatory status of the 218-219 MHz service to a private service in 1996. Since then, the Commission has made reasoned public interest determinations that the radio services it authorizes should not be rigidly stuck in never-changing molds, but that a flexible mix of private and common carrier services should be authorized across the different services.⁸ AirTouch provides no reasons why the 218-219 MHz service should be treated inconsistently, other than reasons having to do with its own private interests in how much it paid for its narrowband PCS licenses. The Commission should adopt its flexible regulatory

⁷ Those services include (but are by no means limited to) polling, point-of-sale transmissions, home banking, messaging, meter reading, stock quotations on demand, and ATM and credit card verifications. See Amendment of Part 95 of the Commission’s Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers, WT Docket No. 95-47, *Report and Order*, 11 FCC Rcd. 6610 (1996).

⁸ Enhancements to CTI’s vehicle tracking service envision applications that may utilize an interconnection with the Public Switched Network (PSN). Although CTI cannot provide details on these applications for strategic business and proprietary reasons, these applications generally deal with integrating a telephone feature used by the customer of a business whose vehicles are on CTI’s tracking network. CTI is convinced that demand exists for these types of innovative PSN-interconnected services in its market.

proposal and permit 218-219 MHz licensees to choose between private and common carrier status. CTI supports In-Sync's proposal for flexible rules dealing with how a 218-219 MHz licensee should identify its status. In-Sync at 4.

Spectrum Aggregation. Although most commenters support the Commission's proposals to permit common ownership of Segment A and Segment B licenses in the 218-219 MHz service, the reasons they give do not support that proposal. Some argue that common ownership should be permitted because of 500 Khz licenses provide too little spectrum for the types of services to be provided. That is simply not the case. The 218-219 MHz licensees have substantially more spectrum than their narrowband counterparts in the 220 MHz SMR and narrowband PCS services, for example. Further, very effective wireless data services can be deployed using one-half megahertz of spectrum. CTI's current business plan focuses on five applications using its Segment B license -- and the company has limited the applications to five for business, not technical reasons.⁹ With cell sectorization, capacity is simply not an issue for the commercial success of a wireless data system.

What is an issue is the availability of applications and equipment. For this reason, CTI is changing the position it took in its initial comments where it supported common ownership for auction but not for lottery markets. CTI now strongly believes the Commission should retain the rule prohibiting common ownership of Segment A and Segment B for all markets, both lottery and auction. The reason is simple. If 218-219 MHz application and equipment developers only have one licensee to go to in a market, fewer applications and equipment will be developed for the 218-

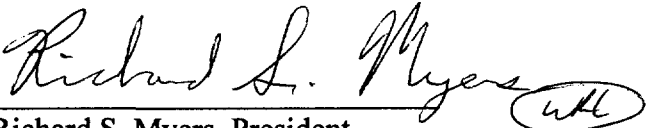
⁹ If system capacity ever is an issue, a licensee could request a waiver of the cross-ownership rule to permit it to acquire the other license based on a showing of actual need to accommodate customer demand of an existing, constructed network.

219 MHz service. Permitting one entity to hold both licenses in a market effectively gives it a total veto over whether a particular 218-219 MHz application or equipment developer has any chance of making it into that market. Thus, contrary to the view of proponents seeking to lift the "spectrum cap" imposed by the current rule separating ownership of Segment A and Segment B licenses, permitting common ownership will actually hinder innovation and development of the 218-219 MHz service. The cross-ownership prohibition should be retained.

CTI appreciates the Commission's efforts to improve the 218-219 MHz service. This service holds great potential for sincere licensees, and perhaps is the only service left that is viable for small entrepreneurs who are building wireless data businesses in local, niche markets. The Commission should foster the development of the 218-219 MHz service by adopting rules that incentivize and support the sincere players while eliminating problems that are preventing this service back from realizing its full potential.

Respectfully submitted,

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